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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,412	09/24/2003	Jimmie D. Weaver	2002-IP-007995U1	7925

7590 04/06/2006

Robert A. Kent
Halliburton Energy Services
2600 S. 2nd Street
Duncan, OK 73536

EXAMINER

TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,412

Applicant(s)

WEAVER ET AL.

Examiner

Philip C. Tucker

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28,30-44 and 46-48 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3,5-12,17-19,22-27,33-35 and 37-44 is/are rejected.
7) ☒ Claim(s) 4,14-16,20,21,28,30-32,36 and 46-48 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/19/05
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-11, 17-19, 22-27, 33-35, 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Harris (5566760).

The claims are rejected for reasons of record in paragraph 2 of the previous office action. The following comments are also made. Applicant has argued that the level of about 0.025% distinguishes from Harris, and suggests that the level of the teaching of Harris is about 0.03%. The use of the term "about" renders the claim anticipated, since "about 0.025" would clearly be inclusive of 0.03. See for example, *In re Ayers* 69 USPQ 109, in which 10% anticipates not to exceed "about" 8%.

3. Claims 1, 2, 5, 10, 11, 33, 34, 37, 42, 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Varadaj (2001/0020531).

Varadaj teaches a method of treating a subterranean formation using a composition comprising a brine, hydrophobic polymer having low substitution (paragraph 0022), and a surfactant within the concentration range of the present invention (paragraph 0025, 0032, 0033 and particularly Figure 3). The method of

making the polymer is not a part of the claimed method, thus such does not distinguish over Varadaj.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5, 10-12, 33, 34, 37, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varadaj (2001/0020531).

Varadaj teaches a method of treating a subterranean formation using a composition comprising a brine, hydrophobic polymer having low substitution (paragraph 0022), and a surfactant within the concentration range of the present invention (paragraph 0025, 0032, 0033 and particularly Figure 3). The method of making the polymer is not a part of the claimed method, thus such does not distinguish over Varadaj. Varadaj differs from the present invention in that the ammonium chloride surfactants of claims 12 and 44 are not disclosed. It would however be obvious to one of ordinary skill in the art to utilize analogous bromide surfactants, instead of chloride surfactants, since such would be expected to have similar utility.


Claims 4, 14-16, 20, 21, 28, 30-32, 36 and 46-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicants arguments are deemed persuasive with respect to Miller and Davies which fail to teach the present concentration. With respect to Harris, in view of In re Ayers, the 0.03 of Harris would anticipate the about 0.025 of the present invention, since as noted by applicant, the surfactants would have a density similar to water of about 1. A new rejection is presented in the present office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C. Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Philip C Tucker
Primary Examiner
Art Unit 1712

PCT-3963